

September 16, 2009
NOTICE OF REGULAR MEETING AND PUBLIC HEARING MEETING OF THE
BENTON COUNTY PLANNING BOARD

WHEN: September 16, 2009
TIME: 5:30 p.m. The Benton County Planning Board will meet to receive Public Comments on any of the proposed projects on the agenda.
PLACE: Benton County Administration Building, 215 East Central Avenue
Quorum Courtroom, 3rd Floor (Suite 324), Bentonville, AR 72712

MINUTES FOR REGULAR PUBLIC HEARING

1. Call to Order

2. Roll Call

The Benton County Planning Board members in attendance were Scott Borman, Lane Gurel, Bill Kneebone, Ken Knight and Heath Ward. Jim Cole and Mark Curtis were absent. The Staff was represented by Chris Glass, Karen Stewart and Teresa Sidwell.

3. Disposition of the Minutes of August 19, 2009 public hearing meeting as distributed.

Mr. Kneebone made a motion to accept the meeting minutes as distributed; Mr. Knight seconded the motion. Mr. Borman, Mr. Gurel, Mr. Kneebone, Mr. Knight, and Mr. Ward all voted in favor of the motion; the motion was passed.

4. Reports of Planning Board Members

Benton County Judge Bisbee spoke regarding an article that was published in the Morning News concerning County Planning. He stated that it occurred to him that if the Quorum Court members were not aware of his plan for county planning that he would like to make the Board aware of his plans so that there would be no confusion. He thanked the Board for their service and stated that planning was not his job but the job of the Board; he assured them that he was going to let them do their job.

Judge Bisbee stated that he had two basic principals that he would ask the Board to follow. He commented that the county could be geographically divided into three areas (the White River Watershed, the Illinois Watershed, and a strip of land through the center of the county which is most entirely metropolitan). He asked that the Board pass judgments that would be specific to those areas. Judge Bisbee stated that the other strong principle that he has is if society has a need in the way of land planning that we don't attempt to do that land planning with the pocket books or the backs of just a few citizens. He added that the last Beaver Lake watershed ordinance we attempted to pass three or four years ago was so negatively received because a very small group of citizens

could no longer use their land. He stated that if society needs their land then society needs to compensate them. The Judge commented that individuals need to be responsible and whatever is done in regards to land planning should reflect that responsibility.

The Judge stated that he would like to add one more comment. He said that citizens should be able to go to one jurisdiction either a city or a county and buy the permits to build a building. He added that as government we should be able to sort out who has jurisdiction over what piece of property. He stated that there is in the planning jurisdictions of the cities; whatever they choose to exercise be it five miles or one mile; ask the cities to exercise it entirely and the county would do the rest of it. Judge Bisbee stated "If we can adopt whatever it is they're doing in the city; even if we are doing it and we are in their 5 mile planning jurisdiction; that seems reasonable." He said that would be the extent of what he is asking the Board to do other than their job and by every indication you are.

The Judge stated that the Northwest Arkansas Council was looking at forming a volunteer group similar to Delia Hawk's Illinois Watershed project. The group procures federal grants for the repair of buffers. He added that most of the sediment coming into Beaver Lake is not coming from our county but is coming from the south. Judge Bisbee invited Nicole Hardiman of the Northwest Arkansas Council to the podium to speak.

Ms. Hardiman stated that she was working with Mike Malone to set up a watershed partnership with upper White River and Beaver Lake. She stated that she was at the meeting to get a sense of what the planning implications are. Mr. Borman asked if the partnership would be separate from the proposed council of the watershed study that had just been completed. Ms. Hardiman said that they are associated with the Tetrattech report. She added that it would be a 501 C3 non-profit organization independent of the council.

Judge Bisbee stated that he went to the GIS staff when Mike Malone came to visit with him regarding sediment in Beaver Lake. He said that the last aerials photos were taken right after a huge rain event and the aerial photo shows the brown water from the south moving north and just before the Highway 12 bridge there was a quarter mile of mix and then the water turns clear. The judge stated that the issues are obvious and that we should be able to come up with realistic solutions.

Mr. Kneebone stated that the law says that the cities must submit a review to us for subdivisions. Judge Bisbee added "within their planning jurisdiction." He stated that there are things we have to do. The judge said that he and his whole management team went to Little Rock on Monday to attend a five-hour seminar on county judge law and during the trip they read through some of the old attorney general's opinions on the five-mile jurisdiction and to this point every attorney general has side stepped giving a direct answer. He said that what they do say is that the cities can pick how much they want to regulate, be it nothing, one mile or five miles; but they side step on what exclusive planning jurisdiction actually means; if they take one mile and have exclusive planning

out five miles, the judge asked who plans the other four miles. The judge stated that it is an issue that needs to be cleared up in the legislative session. Mr. Kneebone stated that he has been on the Board for ten years and every time this comes up the cities submit plans for the county to review if it is in their five mile zone because the county has to maintain it and build the roads to get there. Judge Bisbee stated that he understood what Mr. Kneebone was saying and asked him to get any questions to Mr. Glass and make sure it is documented so that he can get that information to our legislators. Mr. Glass will tell you that the first question I have when he comes to me with something we need to do is "by whose authority?" Judge Bisbee stated that he always wants to know if it is constitutional, statutory, county ordinance, or is it a rule and regulation. He added that the legislature passes a statute and the last paragraph in that statute usually gives whatever agency that has control over that statute the power to create rules and regulations that have the force of law. Judge Bisbee noted that if it is a rule and regulation, the county can go to the Board and get it changed immediately but if the legislature passed it, then the legislature must be in session in order to get changes made. Mr. Gurel asked if the law covered all planning or just subdivisions. The Judge said that it states in a stand alone sentence that the city has exclusive planning then it goes into subdivision and some commercial. He said that reading the law doesn't help a lot; he stated that one almost has to read every attorney general opinion that has been issued on that law. He said that a good review would have to be done and then they could formulate what needs to be changed or what questions needed to be asked. The current attorney general has not issued any opinions on the five mile jurisdiction and he has tended to give different opinions from the previous attorney generals so there may be a reason to ask him for one.

Mr. Glass stated that he had met with the county attorney and a letter has not been drafted as of yet; he said that an intergovernmental agreement was suggested by the county attorney as well. He added that one of the main goals is to look at the central section of the county and designating a "bright line" for jurisdictions. Mr. Glass commented that state law directs that cities have exclusive subdivision rights, that when they approve a subdivision plan that they submit it to the county within a 60-day window for review and comment. Judge Bisbee recommended that the county accept the review of the city and not have two sets of rules for the same piece of ground.

Mr. Glass stated that a focus group had been formed during the previous administration which included discussion of ideas such as the watershed issues. He added that he had contacted some of the initial participants representing the various interests in the County; he said that he had contacted Jim Gately, who worked with the ABLE (Association for Beaver Lake Environment) organization, and former focus group chairperson Sally Ann Brown, who also worked with ABLE and was also in the property rights group. Mr. Glass indicated that he would be resurrecting the focus group.

Mr. Glass said that when developing a master plan for Benton County it would make sense to go to relative experts for guidance. Mr. Gurel interjected that Jeff Hawkins of Northwest Regional Planning was the most knowledgeable of any of us and he is really up on the laws and everything being discussed. Judge Bisbee agreed that Mr. Hawkins is very knowledgeable and a great resource.

5. **Public Comment**

There was no public comment. The floor was closed for public comment.

6. **New Business:**

- A. Mobile Home Park and Variance from Fees– **Alpha Leasing Company/Betty Mize** – 14032 Whiteoak Lane, Bentonville

This project has been tabled and removed from this agenda.

- B. Preliminary/Final Plats – **Shady Grove Estates, Phase II** – Cozy Corners Road, Siloam Springs

The comments from the TAC meeting for the project were as follows.

- Roy Davis of the Department of Health will require plans from engineer regarding septic compliance before issuance of a letter of approval.
- Staff will email Steven Douglas of the Road Department in regards to a letter of approval.
- David Williams of the City of Siloam Springs Planning Department would like the opportunity to comment on the project.
- A copy of the revised drainage report must be submitted to the Board.
- Letter of approval from David McNair of Gentry Water must be submitted to the Board.

Mr. Steve Ellis of Gentry represented the project. He stated that he had been caught in the middle of the same situation that the judge had just discussed. He said that they had initially submitted this subdivision to the City of Gentry, whose representatives later said they should never have touched it and that they do not want to review it although the project is tied to Gentry's water. Mr. Ellis stated that his criticism is that the County has one set of criteria and the cities have another.

Mrs. Stewart stated that only the revised drainage report had been submitted. Mr. Ellis stated that he had contacted Roy Davis and he advised Mr. Ellis to email him to get an updated version and Mr. Davis would email it right back to Mr. Ellis. He added that 2 days later, his engineer contacted him and said that he has to be the one to submit the drawings if we are using his set of drawings for the preliminary plat. Mr. Ellis said he had spoken with his engineer today and he said that he would have it to her office and he did not. Mrs. Stewart added that she had emailed Steve Douglas of the Road Department and had not received a response. Mr. Ellis stated that he had not contacted the City of Siloam Springs for review. He added that the City of Gentry said that they did not want to see the project and the Mayor of Gentry, Wes Hogue called the Mayor of Siloam Springs, David Williams and he said they did not want to see the project either. Mr. Borman stated that a letter from the City of Gentry would be required stating that they will provide water to the project. Mr. Ellis said that he didn't know he was supposed to provide the letter but he would take care of it.

Mr. Ward made a motion to approve the preliminary/final plats pending all stipulations are met; Mr. Kneebone seconded the motion. The Board voted unanimously to approve. The motion was granted.

C. Variance from Large Scale Development - **Mike's Auto Sales** - 2600 Aspen Lane, Rogers

The comments from the TAC meeting for the project were as follows.

- The Board requires the submittal of a letter from Roy Davis of the Health Department regarding backflow prevention requirements.
- Cars are to be parked behind the fence except for the applicant's personal vehicles.
- The Salinas's driveway cannot be used without written agreement.

Mrs. Jennifer Oldham represented the project.

Mrs. Stewart read the letter from Roy Davis of the Health Department and stated that the project meets all stipulations. Mrs. Oldham confirmed that they would be allowed to park their personal vehicles in the front drive and still meet the stipulations. The Board agreed. Mr. Gurel asked which requirements for large scale development are not being required because of the variance. Mr. Glass stated that the cars are brought to the project location and are serviced; and then the cars are moved to another location to be sold by a retailer. Mr. Ward stated that by granting the variance it makes the project compliant with county regulations.

Mr. Ward made a motion to grant a variance from large scale development regulations; Mr. Knight seconded the motion. The Board voted unanimously to approve the variance. The variance was granted.

8. **Other Business:**

Mr. Knight asked about the Christian rock concert. Mr. Borman stated that there was no meeting scheduled. Mr. Glass stated that a project such as this needs to be presented in a public forum in order for the public to have input. He added that the cost for the meeting (i.e. board salaries, advertising, and notices) would have to be paid by the applicant if a special hearing was to be held. Mr. Ward stated that it was similar to the craft fair project and that it was a seasonal type project. Mr. Borman added that the health, safety, welfare and environmental of the public all need to be addressed. Mrs. Stewart interjected that this may be something we may want to address a temporary use permit for events with our commercial development subcommittee.

9. **Adjournment:**

The meeting was adjourned at 6:17 p.m.